IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

THURSDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No.18129 of 2006

Between:

B.Padmavathi **… Petitioner**

Versus

The Joint Collector, Khammam,
Khammam district & Anr. **… Respondents**

Counsel for the Petitioner: **Sri S.Lakshma Reddy**

Counsel for the Respondent: **GP for Civil Supplies**

O R D E R :

This Court issued Rule Nisi on 01-9-2006 and interim order was made in WPMP.No.22764 of 2006 that "*there shall be interim stay as prayed for. However, this order will not preclude the authorities from making temporary arrangement during the pendency of the writ petition*".

2. The writ petition is filed for a writ of mandamus to declare the impugned notification in RC.No.J/991/06, dated 23-8-2006 issued by the second respondent in so far as it relates to the petitioner's Fair Price Shop No.35021 of 3-Incline of Kothagudem, pending appeal before the first respondent as totally illegal, without jurisdiction, violative of Article 14 of the Constitution of India and consequently to set aside the same by directing the respondents not to proceed with the notification in RC.No.J/991/06, dated 23-8-2006 issued by the second respondent in so far as Fair Price Shop No.35021 of 3-Incline of Kothagudem, pending the petitioner's appeal before the first respondent and to pass such other suitable orders as this court may deem fit and proper in the circumstances of the case.

3. It is stated by the writ petitioner that the writ petitioner belongs to Scheduled Tribe (Lambadi) community and she was selected and appointed as "dealer" in respect of Fair Price Shop No.35021 of 3-Incline vide authorization no.J/225/04 date -10-2004. The authorization was renewed upto 31-3-2007. While that being so, the petitioner's authorization was cancelled vide orders dated 18-2-2006 by the second respondent. The petitioner filed WP.No.8726 of 2006 challenging the orders of the second respondent. This court dismissed the said writ petition on the ground of alternative remedy of appeal and passed the following order:

"*Writ Petition is accordingly dismissed. However,*

petitioner is at liberty to avail the alternative remedy of appeal and any interim arrangement made pending decision of the appeal to be filed by the petitioner will be subject to the result in the appeal. No costs".

4. It is also stated that the petitioner filed appeal before the first respondent and the matter is pending and the first respondent had not passed any orders on her interim application. While that being so, the second respondent issued impugned notification in RC.No.J/991/06, dated 23-8-2006 inviting applications from the candidates to fill up the said Fair Price Shop on permanent basis with last date of receipt of applications on 09-9-2006.

5. It is also stated that the action of the second respondent is illegal since the impugned notification is in violation of pending appeal and also contrary to the orders made in WP.No.8726 of 2004 dated 26-4-2006. The impugned action would amount to unreasonable and unfair exercise of power, denying the petitioner's right to Fair Price Shop Dealership.

6. In the circumstances stated above, the petitioner prayed for the relief as specified supra.

7. In the counter-affidavit filed by the respondents, it was stated in paragraph no.2 that it is a fact that the petitioner in this case was appointed as Fair Price Shop Dealer for Shop No.35021 located in 3-Incline area of Kothagudem Mandal of Khammam district in the year 2004 by the-then

Revenue Divisional Officer, Kothagudem, duly following the procedure laid down by Government of Andhra Pradesh under GO.Ms.No.53, CA, F & CS (CS.I) Department, dated 6/10/2003 and authorization was also issued by the authority competent to the petitioner to run the said Fair Price Shop as per the conditions mentioned and as per the guidelines issued by the A.P. Civil Supplies Department from time to time under AP State Public Distribution System and its relevant Control Orders. The said authorization was subsequently renewed upto 31/3/2007 by the competent authority i.e., Revenue Divisional Officer, Kothagudem by collecting prescribed fee in the shape of Government challan.

During the visit of Revenue Divisional Officer, Kothagudem to 3-Incline village of Kothagudem Mandal on 11/12/2005 the villagers have complained that the Fair Price Shop Dealer of Shop No.35021 of 3-Incline village is not residing in the village and the Fair Price Shop is being run by benami person and in that shop the essential commodities are being distributed at higher prices than the prices prescribed by the Government, and distributing less quantity of essential commodities than the actual quantity as per the entitlement of scale of quantities prescribed by the Government. Further on 21/12/2005 a complaint petition was received from the public in the office of the respondent no.2 i.e., Revenue Divisional Officer, Kothagudem, wherein it was alleged that the Fair Price Shop Dealer of 3-

Incline of Kothagudem Mandal was not residing locally and she got married with Government employee and the said shop was being run by a benami person. It is alleged that benami person was distributing essential commodities to the card holders for three days only at the fagend of every month under weighment at higher rates than fixed by the Government of AP under Public Distribution System.

It is stated that after examining the seriousness of the contents of the petition received against the writ petitioner and Fair Price Shop Dealer of 3-Incline village, a show cause notice was issued by the respondent no.2 and Revenue Divisional Officer, Kothagudem calling written explanation of said Fair Price Shop dealer on the subject matter of complaint petition under condition 1 (4) of the Annexure to the APSPDS Control Order, 2001.

Further the Dy.Tahsildar, Civil Supplies, Kothagudem was directed to enquire into the contents of the petition received against the petitioner. The matter was got enquired into by the Dy.Tahsildar (CS) Kothagudem. The Fair Price Shop Dealer of 3-Incline village i.e., the writ petitioner submitted her written explanation stating that she was residing in 3-incline village of Kothagudem Mandal and running the said Fair Price Shop by herself only and supplying commodities to the cardholders as per the rates fixed by the Government with accurate weighment.

She stated in her reply that she does not know whereabouts of her husband but she agreed that she would go to her husband soonafter his job

would be regularized.

In reply of the former Fair Price Shop Dealer of 3-Incline village of Kothagudem Mandal dated 10-1-2006 submitted to Revenue Divisional Officer, Kothagudem on 20-1-2006 she agreed that her husband is working as an employee and further stated that she would quit the Fair Price Shop Dealership soonafter regularization of his job.

The enquiry report of the Dy.Tahsildar (CS) Kothagudem, on the complaint against the-then Fair Price Shop Dealer and writ petitioner reveals that

> (a) the petitioner got married a person who is resident of Sarvaram village of Kothagudem Mandal and at present he is working as AR Constable in Army.
>
> (b) that the said Fair Price Shop was not being run by the writ petitioner B.Padmavathi and was being run by an unauthorized, benami person. During the enquiry, the card holders gave written statements to the Dy.Tahsildar (CS) Kothagudem that writ petitioner is not running the shop, but the shop is run by unauthorized benami person. It was stated by the card holders that the benami person selling the essential commodities to the card holders for three days only at the end of every month and in remaining 27 days the shop was being kept closed.

It is stated that according to the instructions issued in para 1.4.2 of Government Memo.No.18835/CS/II/90-IF &DA (CS) (ii) Department, dated 22-3-1990 read with clause 16 (2) (3) the Fair Price Shop Dealer should keep the stocks available in the shop for distribution to the card holders, he/she himself/herself should run the shop, he/she must reside in the village, in

which the shop is located. Further it is stated that as per the instructions issued by the Commissioner of Civil Supplies, AP Hyderabad in Circular No.PDS.II(3)/691/92, dated 17-9-1992 the Fair Price Shop should run only by the candidates to whom the shops were allotted originally by the competent authority but should not be run by any other person.

In view of the above, and after careful examination of the contents of the complaint petition filed by the cardholders and public against the writ petitioner, the enquiry report of the Mandal Revenue Inspector-I, Kothagudem, dated 14-12-2005, the enquiry report of the Dy.Tahsildar (CS) Kothagudem, dated 28-1-2006 and the written explanation submitted by Smt. B.Padmavathi, Ex.Fair Price Shop Dealer and writ petitioner it was proved that writ petitioner contravened the instructions issued in para 1.4.2 of Government Memo.No.18835/CS/II/90-IF and DA (CS (ii) Department dated 22-3-1990 read with clause 16 (2) (3), instructions issued by the Commissioner of Civil Supplies, AP Hyderabad in Circular No.PDS.II(3)/691/92, dated 17-9-1992 and Circular No.PDS.4/1811/86, dated 14-6-1986 and instructions issued by CCS AP Hyderabad in ref.No.PDS.I(2)/56007/2004, dated 21-7-2004 at para I (i) (ii) (iii) and III (iii), guidelines issued in para 4 of the GO.Ms.No.53, CA F&CS (CS.I) Department, dated 6-10-2003, and also contravened the clause 22 (iii) of the APSPDS Control Order, 2001 and condition 1 and 7 of the authorization

issued under APSPDS Control Order, 2001.

It is stated that after careful examination of all available material facts in the case, the authorization issued to Smt.B.Padmavathi i.e., writ petitioner for shop no.35021, 3-Incline village of Kothagudem Mandal, was cancelled vide Proceedings RC.No.J/2008/2005, dated 18-2-2006. The cancellation order was served on the writ petitioner i.e., B.Padmavathi on 28-2-2006 by the Mandal Revenue Inspector concerned.

It is stated that the contents of para no.3 are baseless and hence denied.

8. It is also further stated that in reply to para no.4 it is stated that vide Proceedings RC.No.J/2008/05, dated 18-2-2006 the authorization of Smt.B.Padmavathi former Fair Price Shop Dealer of 3-Incline village of Kothagudem Mandal was cancelled. The orders were served on her on 28-2-2006 under proper acknowledgement. The writ petitioner did not file any appeal before the Joint Collector i.e., appellate authority before expiry of allowable time.

Smt.B.Padmavathi filed WP.No.8726 of 2006 in this Court for quashing the orders of Revenue Divisional Officer, Kothagudem issued in RC.No.J/2008/2005, dated 18-2-2006. This Court dismissed the said writ petition filed by Smt.B.Padmavathi on 26-4-2006 with an observation that the writ petitioner is at liberty to avail the alternative remedy of appeal.

It is stated that Smt.B.Padmavathi filed an appeal petition against the

cancellation orders of the Revenue Divisional Officer, Kothagudem, before the Joint Collector, Khammam on 19-5-2006. The appeal was returned by the appellate authority i.e., the Joint Collector, Khammam vide Lr.No.D/06/2006, dated 14-9-2006 stating that the appellant filed appeal after limitation of time i.e., on 19-5-2006 instead of on or before 30-3-2006 as the orders of the Revenue Divisional Officer, Kothagudem, served on 28-2-2006. Further as per the Fax Message No. D/06/06, dated 20-10-2006 no appeal is re-submitted and pending in the court of appellate authority and Joint Collector, Khammam.

It is stated that after expiry of appeal time given to the petitioner, necessary steps were taken for filling the vacancy of Fair Price Shop Dealer of 3-Incline village, Kothagudem Mandal to restore the system by appointing a regular dealer for the said Fair Price Shop by calling applications from the eligible tribal candidates by means of a public notification issued vide Revenue Divisional Officer, Kothagudem RC.No.J/991/2006, dated 23-8-2006.

9. It is also stated that in the circumstances stated above, for implementation of Public Distribution System by regular dealer for the said3-incline village Fair Price Shop, necessary notification was issued vide this Office RC.No.J/991/2006, dated 23-8-2006 together with other vacant shops calling applications from eligible individuals. The notification was published in

leading news papers. On receipt of stay orders issued by this Court in WPMP.No.22764 of 2006 in WP.No.18129 of 2006, dated 01-9-2006, the selection process is postponed for the 3-Incline Fair Price Shop.

In view of the above facts, the respondents prayed to dismiss the writ petition filed by Smt.B.Padmavathi, former Fair Price Shop Dealer, 3-Incline village of Kothagudem Mandal and further vacate the stay orders issued by this court in WPMP.No.22764 of 2006 in WP.No.18129 of 2006 dated 01-9-2006 and to pass such other suitable orders as this court may deem fit and proper for taking steps for appointing a regular dealer to the Fair Price Shop for distribution of essential commodities to the card holders smoothly.

10. Specific stand had been taken that the appeal was not resubmitted to the appellate authority. However, it is now contended before this Court that the appeal had been represented and reliance was also placed on the decision of the Division Bench of this Court in **MAHENDRA KUMAR GOYAL V/s. Ex.OFFICIO, JOINT SECRETARY & ADDITIONAL COMMISSIONER OF CIVIL SUPPLIES, HYDERABAD AND ANOTHER** [1], and submission was made that the appellate authority can condone the delay. This Court is not inclined to express any opinion relating to this aspect of the matter.

11. In the light of the specific stand taken by the respondents that the appeal was not resubmitted, the petitioner is not entitled to any of the reliefs as prayed for.

12. The writ petition is accordingly dismissed. No costs.

JUSTICE P . S . NARAYANA .

13/09/2007

ISL

---

[1]) 1997 (2) ALT-722 (DB)